

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Fallon Kelly,	)	
	)	
Plaintiff,	)	<b>ORDER ADOPTING REPORT AND</b>
	)	<b>RECOMMENDATION</b>
vs.	)	
	)	Case No. 3:22-cv-00050
FedEx Ground Package System, Inc.,	)	
	)	
Defendant,	)	

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This action originated in North Dakota state court with Plaintiff Fallon Kelly asserting damage caused to a rifle during transportation by Defendant FedEx Ground Package System, Inc. (“FedEx”). Doc. No. 1, Exhibit A. FedEx removed the case to the United States District Court for the District of North Dakota on March 25, 2022. Id. FedEx now moves to dismiss the complaint for failure to state a claim upon which relief could be granted. Doc. No. 5. Kelly opposes the motion to dismiss and moves for remand back to North Dakota state court. Doc. Nos. 10, 11.

On May 31, 2022, United States Magistrate Judge Alice R. Senechal issued a Report and Recommendation, in which she recommended granting Kelly’s motion to remand and denying the motion to dismiss. Doc. No. 18. FedEx was given until June 14, 2022 to file any objections and did file an objection within the appropriate timeframe. Doc. No. 19. Kelly was given until June 21, 2022 to respond to the objection but did not respond.

The Court has carefully reviewed Judge Senechal’s Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The only reasonably foreseeable damages recoverable under the Carmack Amendment total less than \$10,000. Because FedEx has not met its burden of establishing this Court’s subject matter jurisdiction, the case must be remanded.

Accordingly, the Court **ADOPTS** the Report and Recommendation (Doc. No. 18) in its entirety. The Court **FINDS AS MOOT** FedEx's motion to dismiss (Doc. No. 5), **GRANTS** Kelly's motion for remand (Doc. No. 11), and **REMANDS** this case to Ransom County District Court, Southeast Judicial District, State of North Dakota.

**IT IS SO ORDERED.**

Dated this 1st day of July, 2022.

/s/ Peter D. Welte  
Peter D. Welte, Chief Judge  
United States District Court